

Q&A ON THE IMPLEMENTATION OF THE AUTOMATIC EXCHANGE OF INFORMATION ON TAX MATTERS IN ANDORRA

What is the Automatic Exchange of Information (AEOI)?

The AEOI is an international standard governed by the Common Reporting Standard (the OECD common standard, hereinafter referred to as “CRS”) which establishes the way in which those competent authorities that have committed to this international standard, exchange information with respect to financial accounts.

The aim of the referred international standard is to fight tax evasion.

Which are the basic CRS principles?

- **A single global standard:** When identifying the holders and effective beneficiaries of accounts held by natural and legal persons (including trusts and companies) the AEOI participating countries shall apply the same rules.
- **Confidentiality:** sufficient legal and technical protection of the exchanged data’s confidentiality.
- **Reciprocity:** All AEOI participating countries gather and exchange the same information.

Who does the AEOI affect?

The member countries of the G20, the OECD and other important financial centres, which total over 100 jurisdictions committed to implementing AEOI.

AEOI in Andorra

How and when does the AEOI come into effect?

The AEOI implementation can take place by means of a bilateral or multilateral agreement, as is the case of the EU AEOI Agreement or the Multilateral Agreement between Competent Authorities based on the Convention on Mutual Administrative Assistance in Tax Matters. The Andorran law which implements the CRS and develops these agreements, will come into force on the 1st of January 2017 (“AEOI Law”).

With which countries will information be exchanged?

The AEOI Law will permit:

- The automatic exchange of information between the 28 EU member states and Andorra (legal basis: the EU AEOI agreement).
- The automatic exchange of information with other countries (legal basis: Multilateral Agreement between Competent Authorities or bilateral agreements). Prior approval of the Andorran Parliament will be required to enable this automatic exchange.

What are the timings for the first automatic reporting of information on pre-existing accounts?

- The review of pre-existing high value individual accounts (> 1.000.000 dollars) must be completed within one year of the entry into force of the applicable agreement. The first automatic reporting of information will take place once the maximum period of review has lapsed, up until 30 June 2018.
- The review of pre-existing low value individual accounts (< 1.000.000 dollars) must be completed within two years of the entry into force of the applicable agreement. The first automatic reporting of information will take place once the maximum period of review has lapsed, up until 30 June 2019.
- The review of an entity account that has an aggregate account balance or value that exceeds 250.000 dollars, as of 31 December preceding the entry into force of the applicable agreement, must be completed within two years of the entry into force of the applicable agreement. The first automatic reporting of information will take place once the maximum period of review has lapsed, up until 30 June 2019.

How does the AEOI work?

Reportable financial accounts:

- ✓ Accounts held by natural or legal persons that are resident in an EU member state for tax purposes or in another country with which an automatic exchange of information agreement is applicable.
- ✓ Accounts held by non-financial passive entities (“NFE”) when their controlling person is resident in an EU member state for tax purposes or in another country with which an automatic exchange of information agreement is applicable.

The information relating to taxpayers who hold financial accounts in Andorra is disclosed by the reporting financial institutions to the tax authorities (Ministry of Finance). The local tax

authorities will exchange the information automatically and annually with their counterparts in the corresponding country.

The reporting financial institutions are entities resident in Andorra and branch offices of non-resident entities located in Andorra; in particular, insurance entities, banking entities, investment management firms, brokerage firms, asset management firms and asset management firms of collective investment schemes.

What information will be exchanged automatically?

The information to be exchanged includes:

- account number
- taxpayer identification number, country of residence, name, address, country and date of birth of the natural or legal persons that hold the account, or of the natural persons who exercise control over a NFE holder of an account in Andorra, as long as they are residents in an EU member state or in another country with which an automatic exchange of information agreement is applicable.
- all relevant income (interests, dividends, income derived from certain insurance contracts, amongst others), sale proceeds and account balances.

The norm applies to both natural persons and legal entities (including trusts).

Pursuant to international standards in this matter, beneficial owners as well as passive structures and their controlling persons are required to be identified.

What happens to the exchanged information? How is confidentiality preserved?

The client's information will remain confidential pursuant to the obligation of data protection and the principle of specialization that defines the CRS and which binds the Competent Authorities. The client's information will be used for the established purpose, that is, to ascertain correct taxation.

In this regard, Andorra will not only protect the data but will have the right to refuse the data delivery to another participating country if the latter does not comply with the defined standards of confidentiality pursuant to the OECD standards.

Do clients have to be informed of the AEOI?

There is no legal obligation to pre-inform the clients about the AEOI reporting to the authorities or to hand out a copy of the exchanged information.

However, as far as the means available to them allow, the Andorran banks have informed their clients about the new legal framework.

What obligations does the financial entity have under the EU AEOI Agreement when determining a client's residence for tax purposes within the due diligence process applicable to new accounts (pursuant to Andorra's timeline to implement the AEOI a "new account" means an account opened on or after 1 January 2017)?

With respect to new individual accounts, upon account opening, the financial entity must obtain a self-certification that allows the entity to determine the account holder's residence for tax purposes and confirm the reasonableness of such self-certification.

The reporting financial institution will be able to rely on the self-certification so long as it does not have a reason to know that it is incorrect or unreliable in which case it must obtain a valid one based on the account opening documentation, including any documentation collected pursuant to anti money laundering and know your client procedures.

Due diligence obligations are also applicable to entity accounts. The reporting financial entity will have to determine the entities' residence for tax purposes, classify them as active or passive and if the latter, determine the residence of the controlling person.

Andorra la Vella 22 November, 2016.